

United States Court of Appeals For the First Circuit

No. 18-1705

LISA BIRON,

Petitioner - Appellant,

v.

UNITED STATES,

Respondent - Appellee.

Before

Howard, Chief Judge,
Torruella and Kayatta, Circuit Judges.

JUDGMENT

Entered: May 2, 2019

Having reviewed the record in this case, we affirm the judgment of the district court.

We note only the following. Insofar as appellant's appeal is directed at her underlying criminal conviction, it is a successive habeas petition and is thus barred absent prior authorization from this court. See Rodwell v. Pepe, 324 F.3d 66, 67 (1st Cir. 2003) (Rule 60(b) motion should be treated as successive habeas petition if factual predicate constitutes direct challenge to the constitutionality of the underlying conviction). Insofar as she is challenging the habeas court's denial of relief, her claim fails because she did not appeal that judgment and she "may not use Rule 60(b) as a substitute for a timely appeal." Giroux v. Fed. Nat'l Mortg. Ass'n, 810 F.3d 103, 108 (1st Cir. 2016) (quoting Ojeda-Toro v. Rivera-Méndez, 853 F.2d 25, 28-29 (1st Cir.1988)).

Affirmed. 1st Cir. Loc. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:

Lisa Biron, John P. Kacavas, Donald A. Feith, Seth R. Aframe, Helen White Fitzgibbon